

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6589

BILL NUMBER: HB 1437

NOTE PREPARED: Feb 26, 2004

BILL AMENDED: Feb 24, 2004

SUBJECT: Forensic Diversion Program.

FIRST AUTHOR: Rep. Crawford

FIRST SPONSOR: Sen. Long

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It creates a forensic diversion program to provide community treatment and mental health and addiction services for offenders suffering from mental illness or addictive disorders who have not been charged or convicted of a violent crime. It requires a county having a community corrections advisory board to formulate a forensic diversion plan, and permits a county without a community corrections advisory board to establish a forensic diversion advisory board to operate a forensic diversion program. Offenders eligible for the program who have been charged with a non-violent misdemeanor or D felony that can be reduced to a misdemeanor are required to plead guilty before participating in the program. Persons already convicted of a crime that is not a violent crime or a drug dealing offense may participate in the program as a condition of probation. It specifies that offenders convicted of certain crimes may not participate in the forensic diversion plan. It requires that a person being committed to a facility under the control of the Division of Mental Health to follow the procedures under IC 12-26.
- B. It establishes a Forensic Diversion Study Committee.
- C. It requires the Department of Correction to determine the average daily cost of incarceration and the anticipated future costs of incarceration.
- D. It requires each county sheriff to provide the Department of Correction with the average daily cost of incarceration in a county jail.
- E. It repeals the existing forensic diversion program.

Effective Date: July 1, 2004.

Explanation of State Expenditures: *Provisions A and B:* Under this bill, offenders who are convicted of

nonviolent crimes and are found by the court to be addicted to controlled substances or mentally ill could be sentenced to forensic diversion programs rather than state correctional facilities. The offender could remain in the program for a maximum of two years if the crime is a misdemeanor and three years if the crime is a Class D felony. Courts would not be required to establish these programs and criminal defendants would not have the right to be referred to these programs.

These community-based programs would be operated by a community corrections advisory board or a forensic diversion advisory board if a community corrections program does not exist in the county. In developing the program, the board must consider whether any of these programs already exist: certified drug court, court alcohol and drug services programs, or community corrections programs.

If an offender is ordered to participate in an alternative program instead of being incarcerated, the state would save the cost of incarceration. The savings from diverting felony offenders to community programs would be offset by the costs of treatment, supervision in the community, and by the potential failure of treatment for some offenders resulting in a term of incarceration in a Department of Correction (DOC) facility.

The following information is provided as it relates to the fiscal impact of this bill:

- The potential number of Class D felony offenders who are committed to the Department of Correction.
- The duration of the program compared to the sentences of the offenders.
- The potential number of beds saved.
- The new costs associated with establishing these programs at the county level which will offset the avoided costs of incarcerating these offenders.

Potential Number of Offenders:

Based on the offender population in DOC facilities on December 15, 2003, 1,662 Class D felons were in DOC facilities on a first-time commitment. The following shows the general type of crime that these offenders committed:

Class D Felons Committed to DOC as of December 15, 2003, with No Prior History	
<u>General Category</u>	<u>Number of Offenders</u>
Aiding, Attempt and Conspiracy	41
Drug Related	337
Public Order	235
Crimes Against a Person	166
Property Related	459
Vehicle Related	415
Weapons Related	9
	1,662

Existing Programs:

There are two types of programs that have an affiliation with state agencies. Community corrections programs are funded in part by the Department of Correction. Drug courts and alcohol and drug programs are certified by the Indiana Judicial Center. Currently, 82 counties have some combination of drug courts, alcohol and drug programs, or community corrections programs operating. About 94% of the first time Class D offenders were committed from these counties. Ten counties have no program affiliated with the Department of Correction or the Indiana Judicial Center.

Class D Offenders in DOC Facilities on December 15, 2003, with Intake Dates During FY 2003 Committed for Nonforcible Felonies By Felony Class			
	Counties	Offenders	Percent
Counties with Community Corrections Drug Courts or Drug and Alcohol Programs	82	1,556	94%
Counties without Community Corrections Programs Drug Courts or Drug and Alcohol Programs	10	106	6%
Grand Total	92	1,662	

Average Length of Sentence:

Both the sentence length that the court imposes and the length of the program will affect the costs of this new program. The length of stay for offenders ordered to participate in a forensic diversion program could be as long as three years. Once the treatment program ends, the offender would presumably remain on probation for the balance of the offender's sentence.

The following shows the shortest and longest potential length of stays based on the 1,662 offenders who were in DOC facilities on December 15, 2003.

Average Minimum and Maximum Sentence Lengths of Offenders			
<u>Felony Class</u>	<u>Number of Felons</u>	<u>Average Length of Sentence (In Years) Based on</u>	
		<u>Earliest Possible Release Date</u>	<u>Maximum Release Date</u>
D	1,662	1.2	2.1

Illustration of Potential Number of Beds Saved:

When making these projections, the following assumptions are made:

- All counties will have a program that is fully implemented on July 1, 2004.
- All offenders with no prior commitments for a Class D felony to DOC are eligible.
- Half of these offenders have an addiction to a controlled substance or are mentally ill.
- No one placed in the program violates rules and is returned to DOC facilities.

The following illustrates the number of beds that could be saved if half of the offenders with no prior commitment to DOC remain in the local community in a forensic diversion program.

Illustration of Offenders Diverted from DOC Facilities				
Class D Offenders With No Prior Commitment to DOC	Percent With Substance Abuse Addiction	Potential Number of Offenders Who Would Be Diverted	Year when Commitment Begins	Year When Offender Is Released
1,662	50%	831	2005	2006

Based on these offenders, the following table illustrates the potential beds that could be saved over a 12-month period if these offenders are successfully diverted into a community-based system and do not return to the Department of Correction.

In FY 2004, the average cost for housing an offender in a contract bed in a private facility is \$45 per day. Applying this cost, if these offenders never served time in a state correctional facility, the state could save an estimated \$13.6 M.

Illustration of Potential Savings of Prison Beds Through Diversion of Class D Felony Offenders				
Number of Offenders		Per Diem Cost		Savings in Millions
831	x	\$16,425	=	\$13.6 M.

Offsetting Costs

The following series of costs, will offset the savings associated with the cost of prison beds and the associated costs of keeping offenders in DOC facilities:

- Inpatient and outpatient substance abuse treatment.
- New residential facilities constructed.
- More probation officers to supervise offenders who complete the program.
- Offenders failing to complete program or violating rules and returning to DOC.
- Court-ordered assessments of each offender.
- Added responsibilities for the Family and Social Services Administration to monitor and certify the programs.

(1) Inpatient and Outpatient Care - The treatment for an offender will depend on each offender's degree of addiction. The following table illustrates the potential treatment costs assuming that in the first year each offender will participate in each substance abuse program type for the average length of stay.

<u>Treatment Stage</u>	<u>Length of Stay</u>	<u>Cost Per Day</u>	<u>Cost Per Treatment Stage</u>	<u>If 831 Offenders Are Treated Each Year (in Millions)</u>
Detoxification	6	\$194	\$1,164	\$1.0 M.
Residential	92	\$66	\$6,072	\$5.1 M.
Intensive Outpatient	52	\$33	\$1,716	\$1.4 M.
Standard Outpatient	215	\$15	\$3,225	\$2.7 M.
Annual	365		\$12,177	\$10.1 M.

Source: *The Cost and Components of Substance Abuse Treatment, July, 2001*, Center for Substance Abuse Treatment.

Offenders successfully completing the first year, will likely need continued counseling, vocational training, and other assistance in providing child care, housing, and transportation. Offenders who relapse may need

additional detoxification, counseling, or another treatment component.

(2) Residential Facilities – Depending on the current facilities that are available, more residential facilities may be needed to accommodate the added offenders. The specific costs associated with these facilities will depend on the arrangements made at the local level. Some of these facilities could be built by private providers, but at least some of the costs will need to be absorbed by the Forensic Diversion Program Account.

(3) More Probation Officers – Offenders committed to this program presumably are in intensive supervision during the early stages of the program and serve the remainder of their sentence on probation. As an example, a Class D offender may remain in a residential or institutional setting for several months and be assigned to probation for the remaining portion of the sentence. Depending on how long the court orders that these offenders remain in a program, the courts may need to increase the number of probation officers to supervise these offenders. The need for more probation officers will depend on the backgrounds of the offenders and the degree of supervision that these offenders will need.

(4) Failure to Complete Program and Rules Violations – Offenders will often fail to complete treatment or will commit new crimes. Depending on whether a rule is broken or a new crime is committed, offenders will either have to return to DOC or may be ordered to participate in more intensive and more expensive treatment components. According to a report on substance abuse programs in state correctional facilities, about 55% of the offenders enrolled successfully complete the program. (Others were removed from the program, transferred, or were released from a sentence before completing the program.)

(5) Court-Ordered Assessments of Offenders - The court may request that the controlled substance rehabilitation program established in the county evaluate and examine an individual to determine whether the individual is a drug abuser or alcoholic and would be rehabilitated through treatment. No data exists to indicate how many offenders may be evaluated and examined for intake into the program. Assuming that every new offender is evaluated, based on the average cost of evaluations and medical examinations, the total cost is estimated to be \$215,000 each year.

Costs of Various Evaluations		
Service Type	Average Cost of Service ¹	If 831 Offenders Are Evaluated Each Year
Initial Assessment	\$61.75	\$51,314
Medical Examination	\$80.25	\$66,688
Psychosocial Evaluation	\$115.25	\$95,773
Total	\$258.25	\$214,606
¹ The average cost for each level of care were averaged for this review. Source: <i>The Cost and Components of Substance Abuse Treatment, July 2001</i> , National Evaluation Data Services.		

(6) Certification of Programs – Under the bill, a controlled substance rehabilitation program must be certified by the Division of Mental Health and Addiction of the Family and Social Services Administration. FSSA is likely to incur some added costs to certify programs that do not currently exist. As of February 2004, 51 counties reported having drug and alcohol programs and operating under the provisions of IC 12-23-14 and the regulations of the Judicial Conference of Indiana. The following table represents the status of Indiana's counties with alcohol and drug service programs.

	<u>Counties</u>	<u>Class D offenders</u>	<u>Percent</u>
With Alcohol and Drug Services	51	1,289	78%
In Planning Stage	13	201	12%
No Program	28	172	10%
Totals	92	1,662	

(7) Department of Correction Staff -- DOC staff would likely need to monitor and evaluate the program with other participating agencies. Depending on the involvement of the Department, DOC may need to add more administrative staff.

Provision B - Forensic Diversion Study Committee – This bill establishes a 15-member study committee consisting of four legislators, three lay members, and eight state employees. The committee is to operate under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees ranging from \$6,000 to \$9,000 per interim for committees with fewer than 16 members.

The committee's purpose is to evaluate the effectiveness and appropriateness of forensic diversion programs in Indiana and review the adequacy of funding for these programs. The committee would be charged with submitting a final report before November 1, 2007.

Provision C would require DOC to develop a methodology for determining the average daily cost of incarcerating offenders in state facilities and in each county jail. The costs would be provided in a semiannual report to each court with jurisdiction over felony and misdemeanor cases.

Under current law, the State Board of Accounts is responsible for estimating the average daily cost of confining people in certain state correctional facilities (to fulfill IC 11-12-2-9). According to DOC, DOC estimates the average daily cost of incarceration and provides this information to the State Board of Accounts for review. New activities for DOC under the bill may include collecting semiannual average daily cost data from the 92 counties and producing reports for courts with jurisdiction over felony and misdemeanor cases. This may require minimal increases in workload.

The bill also requires that the DOC conduct or contract for an actuarially based study of the projected costs of incarceration including present and anticipated future costs, the effect of credit time, the effect of inmate mortality rates, projected increase in the cost of incarceration, and any other relevant factors. The results of the study would be distributed to the Legislative Council by July 1 of each year. The DOC currently operates a prison population estimating program. Assuming that the information produced by this system is sufficient to make actuarially based studies of project costs of incarceration, fulfilling the reporting requirements under this section may require additional work for the fiscal section of DOC.

Explanation of State Revenues:

Explanation of Local Expenditures: *Provisions A and B:* The prison population data from December 15, 2003, includes the county from which these offenders were sentenced. Based on this data, the number of offenders who could potentially be in a program in each county are estimated. The following table shows that 66 of the counties will retain 10 or fewer offenders that would have been committed to DOC from their counties.

How Felony Offenders Might Be Distributed				
Counties With:				
Number of Felons Who Would	Community	A Program In	No Program	Total Counties

Remain in County	Corrections, Drug Court, or Alcohol and Drug Services	Planning Stages	Affiliated with a State Agency	
5 or less	44	2	7	53
6 to 10	12		1	13
11 to 20	8	1	1	10
21 to 49	8			8
50 to 99	2			2
100 or more	<u>1</u>	<u> </u>	<u> </u>	<u>1</u>
Total	75	3	9	87

Note: There were 5 counties without Class D offenders in this group

Depending on the number of offenders, counties may wish to consolidate operations to spread costs over a larger number of offenders.

Misdemeanants: Offenders who are charged with a misdemeanor may also participate in the program. There is limited information on the number of misdemeanants who are in county jails. Presumably, the majority of these misdemeanants are incarcerated for OWI.

Commitment Procedures: Any additional work for the court or any costs to the county will depend on how often the court wishes to commit participants in a forensic diversion program to facilities operated by the Division of Mental Health and Addiction and whether the participant is willing to be committed. The costs for court time will be minimal when a person in a forensic diversion program volunteers for treatment in a state facility. However, the costs to the court would likely be greater if the person must be committed for involuntary treatment since the person would be entitled to legal counsel that would be paid by the courts (IC 12-6-2).

Provision C requires courts to include the total costs of incarceration (the number of days for which a prisoner is sentenced times the average daily cost of incarceration) in the sentencing order. To the extent that this provision could require additional preparation time or form redesign, administrative costs could minimally increase.

The bill also requires county sheriffs to provide DOC with the average daily cost of incarcerating a prisoner in their county jails. Statute requires a sheriff to base per diem fees on average daily cost, but it does not require sheriffs to collect cost information. For the most part, sheriffs do not collect or report average daily cost information. In order to report this information semiannually on January 31 and June 30, sheriffs may incur additional costs for accounting services. The amount of the additional costs will depend on information currently available in the individual county.

Background: According to the Indiana Sheriffs' Association, information on average daily cost was compiled in a voluntary survey conducted several years ago. The purpose of the survey was to show the difference between average daily cost and the per diem reimbursement counties receive from the state for housing a state prisoner. The survey showed great variation among counties, with an average cost of about \$44 per day.

Provision E - Allowing Drug Dealing Offenses to be Administered by Drug Courts – Currently, 13 counties operate drug courts in Indiana, and five additional courts are in the planning stage. The following counties currently operate Drug Courts: Allen, Clark, Dearborn/Ohio, Lake, Johnson, Madison, Marion, Monroe, St. Joseph, Tippecanoe, Vanderburgh, and Vigo.

The following counties have Drug Courts in planning stages: Delaware, Grant, Howard, Lawrence, and Warrick.

If these courts are authorized to supervise defendants who have been charged with drug dealing, it is possible that more offenders may be able to remain in the communities.

Explanation of Local Revenues: *Provisions A and B:* The Department of Correction would be responsible for disbursing funds from the Forensic Diversion Account to counties that comply with the provisions of the bill.

State Agencies Affected: Department of Correction, Family and Social Services Administration.

Local Agencies Affected: Trial Courts; Counties; Prosecuting Attorneys; Community Corrections Agencies.

Information Sources: *Indiana Judicial Report 2002; Indiana Probation Report 2002; Department of Correction Substance Abuse Program Accomplishments 2002; United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, ADSS Cost Study: Costs of Substance Abuse Treatment in the Specialty Sector; National Evaluation Data Services, The Cost and Components of Substance Abuse Treatment, July 2001, <http://www.in.gov/judiciary/center/cadp/docs/directory0104.doc>*

Fiscal Analyst: Mark Goodpaster, 317-232-9852.